

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA M. BOCK and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 00-674; Submitted on the Record;
Issued April 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's August 6, 1999 request for reconsideration on the grounds that it was untimely filed and did not demonstrate clear evidence of error.

In the prior appeal of this case,¹ the Board found that the Office acted within its discretion in denying appellant's requests for reconsideration. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference. Appellant sustained an occupational disease as a rural letter carrier which the Office accepted for the conditions of lumbar strain and temporary aggravation of degenerative disc disease. Appellant later claimed a recurrence of disability on November 8, 1994. The Office denied this claim on the grounds that appellant failed to submit a rationalized medical opinion demonstrating a causal relationship between her accepted employment injury and the claimed disability for work. The Office issued its most recent decision on the merits of this recurrence of disability claim on March 1, 1995. Appellant requested reconsideration on several occasions, but she supported her requests with evidence that was repetitious or cumulative. In the absence of new and relevant evidence, the Office denied her requests for reconsideration.

In a letter dated August 6, 1999, appellant again requested reconsideration based on the February 15 and July 12, 1999 reports of Dr. Frank M. Yatsu, her attending neurologist. In his February 15, 1999 report, Dr. Yatsu related appellant's complaints and medications. After describing his findings on examination, he reported the following impressions and recommendations: "Lumbosacral spasm, secondary to injury on the job. It is my medical opinion that the patient is 100 percent disabled because of a pain syndrome, not relieved adequately by the medications noted above, and in this condition she is unable to be gainfully employed."

¹ Docket No. 96-1587 (issued June 23, 1998).

Dr. Yatsu's July 12, 1999 report does not appear in the case record. Appellant submitted a copy of this report to the Board, but the Board lacks jurisdiction to review new evidence.²

In a decision dated August 31, 1999, the Office denied appellant's request for reconsideration because it was untimely and failed to demonstrate error in the Office's most recent merit decision.

The Board finds that the Office properly denied appellant's August 6, 1999 request for reconsideration.

Section 10.607 of the Code of Federal Regulations provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. The Office will consider an untimely application only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.³

Because appellant sent her August 6, 1999 request for reconsideration more than one year after the Office's March 1, 1995 decision denying her claim for recurrence, her request is untimely. Although Dr. Yatsu opined in his February 15, 1999 report that appellant was 100 percent disabled because of a pain syndrome and was unable to be gainfully employed, this evidence does not establish that the Office's decision to deny appellant's recurrence of disability claim was clearly erroneous.

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office. The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error. Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by the Office of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of the Office. To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of the Office decision. The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office such that the Office abused its discretion in denying merit review in the face of such evidence.⁴

The evidence from Dr. Yatsu does not raise a substantial question concerning the correctness of the Office's decision to deny his recurrence of disability claim. The medical

² The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

³ 20 C.F.R. § 10.607.

⁴ *Jeannette Butler*, 47 ECAB 128 (1995); *Mamie L. Morgan*, 47 ECAB 281 (1996).

evidence merely noted the physician's opinion pertaining to appellant's pain syndrome and inability for gainful employment. Dr. Yatsu did not specifically address appellant's disability for work as of November 8, 1994, the period of the alleged recurrence of disability.

As appellant's untimely request for reconsideration fails to demonstrate clear evidence of error in the Office's March 1, 1995 decision, the Office properly denied appellant's August 6, 1999 request for reconsideration.

The August 31, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 27, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member